



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J415/20

In the matter between:

MOPEDI CLIFFORD STEIN

Applicant

and

MINISTER OF EDUCATION AND TRAINING

(DR. BLADE NZIMANDE)

First Respondent

MR GWEBINKUNDLA QONDE

Second Respondent

(DIRECTOR GENERAL HIGHER EDUCATION AND TRAINING

EKURHULENI WEST TVET COLLEGE)

Third Respondent

MS MCN DANGAZELE (ACTING PRINCIPAL)

Fourth Respondent

MS S MAVHUNGU (ACTING DEPUTY PRINCIPAL

CORPORATE SERVICE)

Fifth Respondent

MR MANDIWANA (HUMAN RESOURCE MANAGER)

Sixth Respondent

Heard: 14 May 2020

Delivered: 14 May 2020

Reasons: In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 31 August 2020.

JUDGMENT – REASONS FOR ORDER

MAHOSI, J

Introduction

- [1] On 14 May 2020, the applicant brought an urgent application in terms of which he sought an order declaring that the respondents made unlawful and invalid deductions from his salary and an order for the reversal thereof.
- [2] The applicant further sought an order interdicting the respondents from making any such deductions without following the procedure as set out in the Determination and Directive on Leave of Absence in the Public Service. Furthermore, the applicant sought an order declaring that the respondent committed an unfair labour practices in terms of section 186(2) of the Labour Relations Act¹ (LRA) and section 23 of the Constitution².
- [3] The parties agreed to have the matter disposed of on the pleadings and the heads of argument filed. Having had regard thereto, this Court struck the matter off the roll with costs.
- [4] Subsequent thereto, the applicant requested reasons for this Court's order which are provided hereunder.

¹ Act 66 of 1995, as amended.

² Act 108 of 1996, as amended

Background

- [5] The applicant is employed by the Department of Higher Education to perform his duties at the third respondent in a position of Labour Relations Officer. He is aggrieved by the alleged unilateral deductions from his salary, which relate to a period on 8 January 2019, 25 and 26 February 2019, 6 March 2019, and 2 to 9 December 2019.

Preliminary points

- [6] In his replying affidavit, the applicant raised a preliminary point challenging Mr. Mandiwana's authority to depose to respondents' the answering affidavit and his personal knowledge of the contents thereof. In doing so, the applicant simply makes allegations without laying out facts to supporting them.
- [7] There is absolutely no merit to this point. Mr. Mandiwana, third respondent's Human Resource Manager, is cited by the applicant as the sixth respondent and it is not disputed that the applicant reports to him. It is further not disputed that Mr Mandiwana is responsible for keeping the attendance register of the third respondent's employees. For this reason, this point must be dismissed.
- [8] The point raised in relation to Mr. Madiwana's credibility and alleged fraudulent signing of leave forms goes to the merit of this matter which will not be dealt with for the reasons that become apparent later in the judgment.

Submissions

- [9] It is the applicant's case that he only became aware of the deductions on 28 February 2020 after he received an sms notification of his salary from his employer. Upon realization of this alleged unlawful deduction, the applicant made enquiries from the Human Resource (HR) office after which he realized that further deductions were made in 2019. After

unsuccessfully engaging with the HR, he lodged a grievance with the respondents. However, he was dissatisfied with the outcome thereof. This then led to the launching of this application.

[10] The respondents opposed this application for its lack of urgency and on merits.

Urgency

[11] Rule 8(2) of the Rules of this Court, which governs urgent applications provides as follows:

- ‘(1) A party that applies for urgent relief must file an application that complies with the requirements of Rules 7(1), 7(2), 7(3) and, if applicable, 7(7).
- (2) The affidavit in support of the application must also contain-
 - (a) the reasons for urgency and why urgent relief is necessary;
 - (b) the reasons why the requirements of the rules were not complied with, if that is the case; and
 - (c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the party must provide reasons why a shorter period of notice should be permitted.’

[12] In *Jiba v Minister of Justice and Constitutional Development and Others*³, this Court considered Rule 8 and stated as follows:

‘Rule 8 of the rules of this court require a party seeking urgent relief to set out the reasons for urgency and why urgent relief is necessary. It is trite law that there are degrees of urgency. And the degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.’

[13] In this matter, the applicant submitted that the reason his matter should

³ (2010) 31 ILJ 112 (LC) at para 18.

be dealt with urgently is because it is about his livelihood as he uses his salary for transportation that he uses in order to report for duty and to take care of his two families. The applicant further submits that there will be continuous salary deductions by the respondents and that he has moved this application as expeditiously as possible in the circumstances.

- [14] In opposing, the respondent submits that the sms that the applicant received on 28 February 2020, which alerted him to the deductions made in December 2019 cannot be a cogent enough reason for this Court to intervene on an urgent basis. The basis for this submission is that to an extent that the applicant, like all other employees, receives a paper-based pay slip, have access to the Department's persal system where he can electronically view his pay slip and receives an sms notification when his salary is deposited into his account, it is improbable that he could not have been aware of the deduction that took place over a year or so ago.
- [15] On the deduction made on February 2020, the respondent submits that there are no exceptional circumstances warranting the applicant urgent assistance. In relation to the suspected future deductions, the respondent submits that the applicant failed to specify the quantum and dates thereof, which leaves them and the court to speculate, so goes the argument.
- [16] In this regard, I agree with the respondent's submission that the applicant has not made out a case to justify an expedited hearing and has not set out the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. This is further demonstrated by the order that the applicant seeks in terms of paragraph 4, that is the declaration that the respondent committed unfair labour practice. These kinds of matters are not determined in an urgent court. There is, therefore, no reason why this matter ought to have been afforded urgent attention and not dealt with in the normal course.
- [17] What aggravates matters for the applicant is his submission, in his replying affidavit, that this application is not about monetary value but about the violation of the basic labour law rights and abuse of power. These are

issues that can be entertained in the ordinary motion court, not the urgent court during the national disaster. In light of the aforementioned reasons, it is my view that the applicant has failed to make out a case for urgency in this case.

Costs

- [18] Guided by the principles of law and fairness, this Court has a discretion in awarding costs. In *Zungu v Premier of Kwa Zulu-Natal and Others*⁴ the Constitutional Court confirmed that the rule of practice that costs follow the result does not apply in labour matters. The Court should seek to strike a fair balance between unduly discouraging parties from approaching the Labour Court to have their disputes dealt with and, on the other hand allowing those parties to bring to this Court or oppose cases that should not have been brought to Court or opposed in the first place.
- [19] This is a case where the Court has to strike a balance, considering the requirements of law and fairness. This Court is loath to award costs where there is an existing relationship between the parties, however, this is one of those matters where costs against the applicant are warranted as his persistence in bringing this application during level 5 national lockdown, when there was no urgency was unreasonable. In the premise, the requirements of law and equity prompted this Court to exercise its discretion in favour of the respondent and to order applicant to pay the respondents' costs.
- [20] It was for the above reasons why this Court issued the aforementioned order.

D. Mahosi

Judge of the Labour Court of South Africa

Representatives

For the Applicant:

S. Gunuza Attorneys c/o Chris Billing Attorneys

⁴ (2018) 39 ILJ 523 (CC) at para 24.

For the Respondent: Mr Nicholas Mgedeza from State Attorney's Office

LABOUR COURT